

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

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NAOMI GONZALES,

Plaintiff,

-against-

AGWAY ENERGY SERVICES, LLC,

Defendant.

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Case No. 5:18-cv-00235-MAD-ATB

**NOTICE OF MOTION TO SUBSTITUTE PLAINTIFF**

**PLEASE TAKE NOTICE** that, upon the accompanying Memorandum of Law and Declaration of Todd S. Garber, Plaintiff will move this Court, on a date and at a time to be determined by the Court, for an Order pursuant to Rule 25 of the Federal Rules of Civil Procedure to substitute Antonio Martinez, in his capacity as executor of Naomi Gonzales' estate, for Naomi Gonzales as Plaintiff.

In compliance with Local Rule 7.1, Plaintiff's counsel notified Defendant's counsel of Plaintiff Naomi Gonzales' passing on November 5, 2020, and discussed Plaintiff's counsel's intent to substitute Plaintiff. On November 6, 2020, the parties submitted a joint letter to Magistrate Judge Baxter, notifying the Court of Ms. Gonzales' death. *See* ECF No. 115. During a telephone conference with Magistrate Judge Baxter held on November 18, 2020, Plaintiff's counsel notified the Court that we anticipated the filing of a motion for substitution. *See* November 18, 2020 Text Minute Entry. On November 19, 2020, counsel for the parties received an email from Nicole Eallonardo, Courtroom Deputy to Magistrate Judge Baxter, advising that the motion be directed to Magistrate Judge Baxter and that "[t]here is no need for a further pre-motion conference in relation to those motions."

Dated: February 3, 2021

By: s/ Todd S. Garber  
Todd S. Garber  
Chantal Khalil  
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*Attorneys for Plaintiff  
and the Putative Class*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 3, 2021, I electronically filed the foregoing motion and its supporting papers with the Clerk of the District Court using the CM/ECF system, which sent notification of such filings to all counsel of record.

*s/ Todd S. Garber*  
Todd S. Garber